



**DUTY OF
CARE**

**Duty of Care
Submission
To**

Legislative Council of Victoria

Select Committee on Gaming Licensing

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Duty of Care Incorporated (Duty of Care) is grateful for the opportunity to make a submission to the select committee on gaming licensing. Further, we applaud those members of the Legislative Council who fought for and established the select committee to enquire into the probity of gaming licenses and the effectiveness of current measures for reducing gambling harm in Victoria. In our opinion, such an enquiry is long overdue. We hope that the result of the Victorian Legislative Council enquiry inspires other elected members of other state parliaments to carry out similar investigations.

Sue Pinkerton, national Secretary and South Australian representative of Duty of Care, problem gambling research consultant and former gambling machine addict¹, would welcome the opportunity to speak to our submission during any public hearings the committee holds so we can respond to any questions the committee may have regarding our submission.

Duty of Care is a national, non-profit consumer protection association representing gaming machine consumers and their families. Duty of Care was founded in January of 2005 by three women who had first hand experience of the harmful financial, social and psychological consequences of excessive access to gambling machines. We currently have 300 members, (all of whom have been harmed in some way by gambling machine addiction).

Duty of Care's mission is simple.

We encourage state governments to remove gambling machines by lobbying ministers and challenging both current and future legislation that allows gambling machines to continue harming the people of Australia financially, psychologically and emotionally.

We attempt to empower and self-actualise gambling machine consumers as a community consumer group with clearly defined and understood consumer rights and responsibilities.

We educate, support, represent and vocalise the wishes of both consumers and the public in relation to consumer rights surrounding gambling machines.

It is our considered and informed position that gambling machines are the most psychologically entrapping, cognitively manipulative, financially, socially and psychologically harmful gambling product yet developed. We believe that the only electronic gambling machine that will not eventually cause harm to users of it is one that is permanently disconnected from any kind of power source.

¹ Duty of Care discourage the use of the term "gaming" – for each one of our members, and for the estimated 300,000 Australians personally harmed by these most cognitively manipulative and addictive machines, gambling is NOT a game. In this submission, any reference to gambling machines can be taken to indicate what others know as "poker machines" or "electronic gaming machines".

We signal our intent to continue lobbying state governments to remove gambling machines.

This submission will address various aspects of the following;

(c) The post 2012 Electronic Gaming Machine (EGM) operator licensing in Victoria

(d) The adequacy or otherwise of legislative and regulatory framework pertaining to the number, location, distribution and specification of EGMs in Victoria

(e) The effectiveness or otherwise of current measures to minimise and address the incidence of problem gambling in Victoria, and the merits of alternative measures

(c) Post-2012 Electronic Gaming Machine (EGM) operator licensing in Victoria

Duty of Care's declared position is that no gambling machines should be allowed to operate from 2012. This would naturally mean that no person or organization would be able to obtain a license to operate EGMs once current licenses expire. We take this position in view of;

1. The tenfold increase in numbers of problem gamblers (and related community costs) that invariably follows the legalisation, introduction and wide spread distribution of gambling machines to any state or country around the world.
2. The significant differences that now exist between Western Australia - where poker machines are not allowed outside their single casino² - and other Australian states where poker machines abound.
3. The positive effect that banning of gambling machines had on levels of problem gambling in South Carolina,
4. The surveyed wishes of Victorian citizens,
5. The professional advice of university academics, Victorian local government representatives and gambling care sector professionals,
6. The failure of the Victorian government to properly regulate and monitor the poker machine gambling industry as evidenced by the 'secret' licensing deals that have occurred between the government and Tattersalls,
7. Development of increasingly harmful poker machines as well as practises and policies developed by the gambling industry that

² It is widely believed that WA has no EGMs. This is wrong. WA has EGMs but not the highly entrapping multi-lined, machines people of other states call "The pokies". The only EGM programs permitted in WA are video poker, video blackjack and bingo/keno-based programs. These gambling programs require the gambler make choices about which cards or numbers they wish to bet on. They are widely recognised by EGM experts as less entrapping and therefore less harmful than the more common 'poker machine'.

constitute unconscionable behaviour – policies and practises that are supported by Victorian government, either overtly or tacitly.

The results of Duty of Cares research into the differences in levels of problem gambling that exist between South Australia and Western Australia clearly shows that gambling machines are the predominant cause of the dramatic increase in numbers of problem gamblers.

In 1990, Both South Australia (population of 1.5 million people) and Western Australia (population of 1.9million people) had some 14 different forms of legalised gambling accessible through a large number of outlets throughout their respective states. Both states had one centrally located casino. Western Australia had an estimated 3,000 problem gamblers – South Australia had an estimated 2,500 problem gamblers.

In 1994, South Australia introduced 15,000 multiple lined, electronic gambling machines into 600 venues scattered throughout the state. Western Australia introduced just 1,500 electronic gambling machines into their one casino. By 1999 – with no other gambling products introduced to either state - South Australia's problem gambling population had blown out to 23,000 people. An almost ten fold increase. Western Australia's problem gambling population on the other hand, had grown from 3,000 people to 7,000 people (most people making up the increase live within 50km of Burswood casino).

In all states and countries throughout the world where EGMs have been legalised, introduced and widely distributed, within five years a sudden and dramatic rise in numbers of problem gamblers occurs. EGMs are clearly a harm causing product, NOT a "safe, fun-filled form of entertainment for all but a few psychologically disturbed individuals.

South Carolina's experience following the removal of all gaming machines from the state in 1999 was explored in Bridwell and Quinn's 2002 study³. Bridwell and Quinns study found that within three months of the removal of gaming machines from South Carolina, there was an 85% drop in the numbers of people seeking help for their so called "gambling addiction", a 100% drop in numbers of callers to the state run gambling help line, a fifty percent drop in numbers of Gamblers Anonymous (GA) meetings, an 80-90% drop in numbers of people attending weekly meetings that continued operating. Reports by the sheriffs department declared that the crime rate – most notably the prevalence of robbery with violence - dropped by 40% once the gaming machines were removed from the state.

These changes happened despite other gambling products being both legal and readily accessible before and after the ban came into force. Bridwell and Quinn comment in their study that people addicted to South Carolina's gambling machines did appear not to have taken up other forms of gambling or other addictive products/substances once the ban came into force – they

³ Bridwell, R. Randall and Quinn, Frank L., 2002. "From Mad Joy To Misfortune: The Merger Of Law And Politics In The World Of Gambling". Mississippi Law Journal. Spring, 2002. pp565-729

merely stopped gambling and returned to living their lives as they had before the machines were introduced to the state.

These facts we suggest provide incontrovertible evidence that gambling machine addiction is not an addiction to gambling but an addiction to a product purposely and knowingly designed to addict. Any government or business that allows gambling machines to remain legal and in operation KNOWING that harm is foreseeable, predictable and preventable, open themselves up to charges of unconscionable conduct.

According to Mark Dickerson⁴ almost one in two regular players of gaming machines report overspending while playing gambling machines despite setting time and monetary spending limits before gambling. The “erosion of control” that occurs during play, Dickerson asserts, is both a “natural outcome of regular involvement in the activity” and “responsible for the excess losses experienced by gaming machine players”.

Clearly the causative agent in pokies addiction lies with the design and fraudulent promotion of a dangerously addictive product, NOT with the “defective” personalities of those who unknowingly fall victim to them.

Today, people in Victoria who self-report having a problem **only** with gaming machines, make up approximately 80% to 90% of the estimated 50,000 problem gamblers in the state. Those who experience problems from betting on the other 14 plus forms of legalized gambling available in the state together contribute just 10% to the pool of people directly experiencing harm as a result of excessive gambling.

For the above reasons, Duty of Care supports the banning of gaming machines but does not call for all forms of gambling to be banned. Research evidence is increasingly clear - the purposeful design of gaming machines and the unconscionable conduct of EGM venue owners/operators in knowingly promoting an unsafe product as a “safe, fun-filled form of entertainment”, is predominantly responsible for the unacceptable level of “problem gambling” in Victoria as it is in any state where EGMs operate.

If gaming machine licenses are to be renewed post 2012, ALL EGMs licensed to operate in Victoria from 2012 MUST be fitted with a mandatory smart card reader and not be useable unless a valid ‘pokies’ card is inserted. Duty of Care support the mandatory use of smart cards only where the system introduced allows for

- One person, one card

⁴ Dickerson, M., 2003, “Exploring The Limits Of ‘Responsible Gambling’: Harm Minimisation Or Consumer Protection? Gambling Research (Journal of the National association for Gambling Studies Australia), 15, 29-44

Dickerson, M., 2004. “Measurement and modelling of impaired control: implications for policy”. Presented 5th.Oct.2004: Insight International Problem Gambling Conference, Nova Scotia.

<http://www.nsgamingfoundation.org/main/presentations/Professor%20Mark%20Dickerson.pdf>

- No card, no play

Any smart card pre-commitment system put in place must enable gamblers to find out how much they have lost/won any given day/week/month/year and enable the gambler to immediately exclude themselves from gambling on ALL machines throughout Victoria at the touch of a button.

(d) The adequacy or otherwise of the legislative and regulatory framework pertaining to the number, location, distribution and specification of EGMs in Victoria.

It is Duty of Care's express opinion that the legislative and regulatory framework pertaining to the number, distribution and specification of EGMS in Victoria is woefully inadequate.

50,000 Victorians suffer problems because of their own gambling. 40,000 of them have problems because they are unable to control how much time and money they spend on just one gambling product out of the 14 or so legalised gambling products readily available to them. For many of our members, gambling has been an activity of choice throughout their lives. Loss of control and subsequent financial, relationship and psychological problems only occurred once they began gambling on EGMs – in some instances after 40 years of “gambling responsibly”.

Small reductions in gambling machine numbers is NOT the solution. Neither are ‘regional caps’. Without the removal of – or the introduction of significant safeguards such as smart cards to – these cognitively manipulative, psychologically and financially harmful, behaviour shaping gambling machines from the state, no government is going to be able to fully protect consumers from gambling machine addiction and the harms that invariably occur.

DOC believes that all gambling machines must be removed from regional and suburban Victoria - preferably from all venues across the state. While many will no doubt argue that banning EGMs will either force gamblers to gamble on other products or to gamble illegally, the experiences of South Carolina (see above) suggests otherwise. The greater majority of people residing in Victoria are law-abiding citizens who will not engage in illegal activities, risk their good name and/or associate with known criminals just to “have a flutter on the pokies”. The public only began gambling on EGMs in large numbers AFTER they were legalised.

IF gambling machines are to continue operating in Victoria, the government, regulators and venue owners/operators alike need to change the current “harm minimisation” framework to a harm prevention/health promotion framework, to SIGNIFICANTLY reduce EGM numbers AND look into EGM programming that is purposely designed to keep people sitting in front of (and pouring their hard earned dollars into) it until they run out of money.

Tim Falkiner and Roger Horbay in their paper “Unbalanced Reel Gaming Machines”⁵ look at the illusionary and fraudulent tricks of EGM program designers. Many of the illusions programmed into EGMs do not comply with Australian and New Zealand Gaming Machine Standards. Horbay and Falkiner reveal that the international body that checks each new games suitability and legality before they are foisted on the public, do not check some aspects of EGM workings. Checking for the appearance of overlapping symbols during spins and the appearance of psychologically priming high payout line-ups of symbols are just two aspects of EGM programming that checkers do not check. EGM checkers either

- take for granted that EGM manufacturers produce machines that comply with Australian standards or
- they assume that what happens during spins complies with the standards or
- they accept the manufacturers assurances that all new EGM programs comply with the Australian standards.

Current checking of machine programs for compliance with Australian and New Zealand Gaming Machine standards by an industry-funded body is inappropriate in the extreme. Further, the government’s acceptance of gambling machine industry assurances that “all is on the level with regards to EGM programming/specifications” beggars belief. What ever happened to healthy scepticism of the veracity of a persons word in circumstances where that same person stands to gain substantially from not revealing the truth? Definitely healthy scepticism is not part of the Bracks government’s make-up.

(e) The effectiveness or otherwise of current measures to minimise and address the incidence of problem gambling in Victoria, the merits of alternative measures.

It is our contention that current measures utilised in Victoria to minimise the incidence of problem gambling are highly effective – but only if one uses the word “minimise” to describe the DOWN PLAYING of the incidence of (and harms caused by) problem gambling. Where the phrase “harm minimisation” is used to describe the effectiveness of policies and procedures in reducing the number of problem gamblers and the harms they suffer, then quite clearly current “harm minimisation” measures are ineffective.

While the number of problem gamblers in Victoria may appear to be static, the amount of money lost annually to gambling machines is still increasing thereby indicating that either problem gamblers are spending more OR that the number of problem gamblers only appears static because the number of people quitting EGMs each year now equals the number of people who become newly addicted to them each year.

⁵ Falkiner, Tim and Horbay, Roger.,2006 “Unbalanced Reel Gaming Machines”
http://www.casinofreepa.org/images/documents/falkiner_horbay_09_09_06.pdf

As Breen and Zimmerman⁶ found, the length of time it takes for a person addicted to EGMs to decimate their finances to the point where they either have to commit crimes to support their addiction OR to quit gambling takes between 2 and 4 years. For people who become addicted to other gambling products, it takes up to ten years to move from novice gambler to financially destitute wreck. In Victoria, the people who became hooked on EGMs in 1991 are unlikely to be the problem gamblers using the machines in 2007. We believe that Victoria is now onto its fourth generation of problem gamblers. This means that 200,000 Victorians have been – or still are – addicted to the pokies since 1992. It also means that at least 1 million Victorians have been harmed by another persons EGM addiction since EGMs were introduced by the Victorian government.

In our opinion, harm minimisation policies and procedures currently in place in Victoria are only effective in enabling the industry and incumbent government to downplay the incidence of problem gambling and the level of harm that is occurring. How often we have read or heard in the media some gambling machine industry representative (or industry apologist) stating “ONLY 1, 2, or 3% of Victorians have a gambling problem”? While this statistic may be correct, it fails to take into account the fact that 40,000 people being harmed by just one gambling product – the EGM – is an unacceptably high number, especially given that only 30% of the adult population ever put a coin into one of the states gambling machines.

Our view is evidenced by our findings that;

1. Over 70% of the population never gamble on an EGM,
2. 10% of all people who ever bet on a gambling machine are harmed
3. One in four of those who gamble on an EGM once per month or more are likewise harmed
4. Five people or more are harmed as a result of the actions of each and every problem gambler.
5. EGMs are the cause of gambling related harm for 80% of known problem gamblers,
6. Legislation and regulations relating to EGM services do not uphold Victorian consumer protection laws
7. Legislation and regulations relating to EGM services do not uphold Australian federal taxation laws.
8. Consumer Affairs Victoria refuses to hear gambling related complaints,
9. The consumer complaint mechanism - the Independent Complaint Resolution Process (ICRP) - as administered by the Victorian Gaming

⁶ Breen, Robert B. and Zimmerman, Mark. 2002. “Rapid Onset of Pathological Gambling in Machine Gamblers”, *Journal of Gambling Studies*, 18, 31-43
Breen, R.B., 2004. “Rapid Onset Of Pathological Gambling In Machine Gamblers: A Replication”. *eCOMMUNITY: International Journal of Mental Health & Addiction*, 2(1). <http://www.ecommunity-journal.com/content/full/2/1/7>

- Machine Industry (VGMI) Secretariat, is limited in scope, unwieldy and costly to undertake,
10. ICRP hearings are not bound by rules of evidence,
 11. The ICRP does not follow up on the gaming industries compliance with the rulings of the presiding “Independent Person”.
 12. The ICRP guidelines overly protect the gaming industry at consumer expense,
 13. The ICRP fails to include the VGMI in its limitations on parties to a complaint hearing resulting in intimidation of consumers,
 14. Many of the regulations dealing with practises and policies of gambling machine venues and operators put in place to “minimise gambling harm” are open to interpretations that subvert the original intent of legislation – namely, to protect consumers from foreseeable harm.

While industry representatives claim that regulations are excessive and/or unnecessarily restrictive, DOC find The Victorian Trade Practices act and federal taxation legislation demands that consumers of goods and services receive receipts for purchases exceeding \$50 or more and receipts must be given where individuals spending less than \$50 on any one purchase request them. The gambling machine industry has consistently ignored trade practices and taxation legislation and the government have failed to enforce compliance with them on the matter of receipts for goods and services provided by the gambling industry.

The industry fail to take steps to enable receipts to be given to consumers - perhaps because providing receipts is costly, time consuming and requires venues to track the spending of consumers who may then see in black and white the amount of money they are spending and potentially have documents by which they can prove their losses in any instance where unfair or illegal practises have occurred. The government’s abject failure in this matter is their failure to provide adequate monitoring and censure of venues that fail to comply with harm minimisation practices. Thus, breeches of trade practises and the codes of practice are rife in gambling venues and the industry able to continue practises that harm gambling machine consumers, their families and communities.

Currently gambling machine consumers have few ways of tracking the amount of money they spend and are unable to prove that their financial losses have occurred in any venue they might otherwise be able to seek recompense from. This leads to an escalation of gambling related harms and an increase in community health costs. The introduction of mandatory smart cards

Duty of Care are of the opinion that the so-called “independent” complaints resolution process is far from “independent” – certainly it is not independent of the gambling industry. Conflicting interests of the gambling machine industry and consumer protection makes the ICRP inadequate as a consumer protection tool the industry would have Victorian people believe it is. Duty of Care have frequently questioned the 'independence' of persons who salary is

paid by the gambling machine industry. We also question whether a “complaints resolution” process can ensure consumers are compensated for losses incurred through unsafe/illegal practices when the presiding officer has no authority to enforce their own rulings.

According to one gambling consumer who was forced to undertake the ICRP process three times in order to successfully resolve a complaint against some Melbourne gambling venues, the “whole process was a farce. It seemed to me that the ICRP is intended to silence the consumer whilst maintaining the appearance of justice having been done and at the same time, minimizing compensation payouts and disruption to ongoing harmful practices of venues”. The consumer concerned complained to Duty of Care that the venue operators the consumer challenged lied through their teeth, made all sorts of promises of compensation and guarantees of change to venue practises, but when these same venues failed to fulfil their promises and guarantees, they were protected by the VGMI.

In our opinion, consumer rights cannot exist within such a process. Consumer comments such as the one above suggest that any consumer complaints processes and gaming industry Codes of Practice should not be left in the hands of the gaming industry. The conflict of interest arising out of self-regulation are too great.

Should the ICRP be permitted to continue, it should at the very least have the authority to ensure that any directives made by the chairperson are actually carried out by parties found to be ‘at fault’. Currently, there is no follow up after the ICRP rules on an issue. This renders any undertakings made during an ICRP to little more than empty promises.

Unfortunately, Consumer Affairs Victoria refuses to hear gambling related complaints because “the gambling machine industry has set up a complaint resolution process”. The end result is that gambling machine consumers are left almost totally unprotected and are denied their rights as consumers of a legal product. For these reasons, Duty of Care Inc believes that the Victorian Civil and Administrative Appeals Tribunal should handle gambling related complaints and the ICRP should be disbanded.

Laws relating to venue opening hours in Victoria are in dire need of change. Currently the law concerned with opening/closing times of venues are open to interpretation. The staggering of opening/closing times that occurs in many local Melbourne areas must cease. In many local Melbourne areas, 'staggered' closing hours (conveniently arranged by the venues concerned to squeeze the last dollar out of gamblers desperately chasing losses), allows for an unofficial 24-hour gambling service that legislation was intended to prevent.

Research from Nova Scotia⁷ found that between the hours of midnight and closing, and shortly after opening in the morning, up to 80% of patrons gambling in any venue are problem gamblers. Mandatory midnight closure of gambling areas in Nova Scotia - far from impinging on the rights of “social gamblers” as the gambling industry predicted - predominantly altered the spending patterns and gambling habits of problem gamblers.

Duty of Care Inc maintains that opportunities for problem gambling must be prevented. As the gambling industry is unwilling to introduce measures that will reduce gambling harm (? because they know that such measures will affect their profits), it is the government’s responsibility to ensure the safety and interests of gambling consumers and the wider community are met. All Victorian venues – with the exception perhaps of the Crown Casino) should close between 1.00am and 9.00am each week day and 2am and 10am at weekends. This will have the effect of allowing gamblers to get a full eight hours of gambling-free time every day. The legislation necessary to ensure set opening/closing times should be introduced to parliament as soon as possible.

It is the unswerving view of Duty of Care Inc that Victorian government brought EGMs to Victoria with insufficient research into the detrimental effects they were having on people in other states and countries. The same government that introduced EGMs has profited from 'tragedy money' for long enough. It is time the government took seriously its role as protector of public safety and upholder of the rights of Victorian people to be protected from foreseeable harm. We do not believe the rights of Victorians to undertake hazardous gambling pursuits should be upheld at the expense of family security and community health and safety. The government has a duty to prohibit dangerous consumer products or to enact legislation that will make them safe for consumer use.

The government must develop and promote “safe limits of usage of gambling machines” to inform EGM users what “gambling responsibly” looks like. We suggest that the following limits be widely advertised and promoted as “safe gambling limits”.

Responsible gamblers gamble on EGMs;

- **less than once per month,**
- **they spend less than 3% of their weekly income, and**
- **they gamble for less than two hours in any one session.**

Finally, more information needs to be given to consumers informing them of the risks they face in choosing to gamble on EGMs. As Tracy Schrans from Focal Research in Nova Scotia said during her presentation at Duty of Care’s 2005 Adelaide conference,

⁷ Corporate Research Associates 2005 “Nova Scotia VLT Time Change Findings Report” http://www.nsgc.ca/pdf/NS_VL_TIMEREPORT.pdf

“The single greatest risk factor for problem gambling is playing an EGM...the second greatest risk factor is having convenient access to one....for people playing an EGM once per month or more there is a one in four risk of becoming a problem gambler. The more frequently a person plays and EGM, the greater the risk that they will develop a significant gambling problem”.

We thank you for accepting our submission and look forward to speaking to it at the Select Committee’s convenience.